No. 14848

IN THE

United States Court of Appeals

for the Ninth Circuit

CHESTER GUITH

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee

APPELLANT'S BRIEF

APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF MONTANA

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STATEMENT OF JURISDICTION

The appellant herein, Chester Guith, was indicated by a Grand Jury in the United States District Court for the District of Montana, Great Falls Division. The indictment, in one count, was based on 18 U.S.C. 1152 (R.C.M. 94-4101). It charged that the appellant on the 9th day of January, 1954, at the Guith Ranch and at a place within the exterior boundaries of the Blackfeet Indian Reservation, being Indian Country, and within the State and District of Montana, did wilfully, unlawfully, and feloniously have sexual intercourse with one, Eleanora Gobert, a female Indian person, of the age of 15 years and not at said time the appellant's wife. To the indictment the defendant entered a plea of "Not Guilty" and was tried by the Court sitting with a jury on June 9th, 10th and 11th, 1955. The jury returned a verdict of "Guilty as Charged" and the appellant was sentenced to serve six years in the Federal Penitentiary.

From the judgment of conviction and sentence, the appellant gave due notice of appeal to this Court on the 13th day of June, 1955.

STATEMENT OF THE CASE

As set forth herein above, the appellant herein was convicted of an offense in the indictment which attempted to charge the defendant under Title 18 U.S. C.A. 1152 by setting forth the crime of statutory rape as provided in Section 94-4101 R.C.M. 1947. The ap-

pellant is a white man while his alleged victim was a member of the Blackfeet Indian tribe.

Upon the settlement of the instructions, the matter having been previously raised by counsel for appellant, the learned Judge in the Court below first instructed the jury, (TR. 187) that the information was based on Section 1152 U.S.C.A., Title 18 and then defined Indian country as set forth in Section 1151 of the same title. The Court below then went on and instructed the jury that the Federal statute upon which the indictment rests is found in Section 2032 U.S.C.A., Title 18, the Federal Carnal Knowledge Act, (TR 188), and defined territorial jurisdiction of the United States as that term is contained in Title 18, U.S.C.A. Section 7, Subdivision 3, and stated that such definition "fits this case precisely". The principal question involved on appeal arises therefore on the question of jurisdiction of the Court below.

Appellant contends that by virtue of the instruction of the Court below, he was actually charged with violation of the Federal Carnal Knowledge Act and not under the Indian Rape Law as originally set out in the indictment. We contend that the determination of the question of jurisdiction is based upon whether or not the alleged crime actually took place within the special maritime and territorial jurisdiction of the United States and not merely the question of whether or not the place of said offense was Indian country as provided in Sections 1151, 1152, U.S.C.A. Title 18.

Minor questions involved in this appeal concern

the admission of certain evidence and the denial of appellant's objection to such evidence involving appellee's Exhibit No. 1, which appellant contends was admitted without proper foundation, (TR 71) and in the refusal of the court to admit certain evidence offered by the appellant, (TR. 149, 150) involving an attempt by the complaining witness' parents to extort money from the appellant.

There is also the additional question of prejudice to the defendant of permitting the trial of the case to continue under one Federal statute and then in the instruction to the jury informing them that the indictment actually rested upon another statute, so that the record made by the defendant below is complicated and harmed by this fact.

SPECIFICATION OF ERRORS

From the judgment of conviction and sentence below, the appellant appeals and specifies as error:

1. The trial court below had no jurisdiction over the offense charged.

2. The court below erred in admitting appellee's Exhibit No. 1 and denying appellant's objection to all of the testimony of the witness King in that no proper foundation had been laid to connect the said Exhibit or said evidence with the appellant herein, all of which evidence was prejudicial to the appellant.

3. The court below erred in refusing to admit appellant's proposed Exhibit No. 4.

4. The trial court erred in instructing the jury that

Section 7, Subdivision 3, Title 18, U.S.C.A. applied to this case in view of the fact that the evidence shows that the Guith Ranch upon which the alleged crime was committed was held by deed by the appellant herein without reservation of any kind or nature by the United States; so that such land was not reserved or acquired by the United States or under the exclusive or concurrent jurisdiction thereof, or in any other manner under said subdivision of said statute.

5. The court below erred in admitting the testimony of the witness Fopp relative to the alleged confession of the appellant, there being no proper foundation laid for the admission hereof, in that there was no showing that no threat or inducement had been made to the appellant. Plaintiff abandons Points 1, 4, 5, 6, and 11, set forth in his statement of points, (TR. 9, 10.)

ARGUMENT

The principal point involved in this appeal is the question of the jurisdiction of the court below which involves appellant's specification of error No. 1. This matter has been before this Court so many times that one would feel that the law of jurisdiction of these cases was clearly settled. Counsel for appellant is convinced that the cases decided leave much to be determined as far as jurisdiction is concerned. The appellant and defendant below is a white man, while the female involved is an Indian. The place where the alleged offense occurred is definitely within the

boundaries of the Blackfeet Indian reservation in the State of Montana.

This case becomes complicated by the fact that the indictment was brought under Title 18 U.S.C.A. 1152 while in its instructions the Court below actually said the case rested on Title 18 U.S.C.A. 2032 the Federal Carnal Knowledge Law. It is our contention that it then became a question not whether Indian country was involved precisely but whether or not the Guith Ranch was within the special territorial jurisdiction of the United States. We contend that because the evidence (TR. 142) definitely shows that the Guith Ranch was deeded to the appellant in fee by a tax deed granted by Glacier County, State of Montana without any reservation by the United States, that the United States definitely had no territorial jurisdiction of the place involved as required by Section 2032 Title 18 U.S.C.A. and Subdivision 3, Section 7 of the same title.

By act of June 2, 1924, Chapter 231, 43 Stat. 252, which is set forth in the historical note to Title 25, Chapter Nine, Section 331, dealing with allotments on Indian Reservations, the Statute provides:

> "The allotments of Blackfeet Indians designated as Homesteads under Section 10 of the Act of June 30, 1919, imposing restrictions on alienation, shall after the death of the original allottee, be subject to partition, sale, issuance of patents in fee, or any other disposition authorized by existing law, relating to Indian allotments."

In this case, the evidence shows (TR. 142) that the

Guith Ranch, which was originally land on the Blackfeet Indian Reservation, had been disposed to the defendant by tax deed from Glacier County, Montana, and was no longer within or subject to the reservation and jurisdiction of the United States.

Originally it was considered by the Supreme Court of the United States in the cases of U.S. vs McBratney, 104 U.S. 621, and Draper vs U.S., 164 U.S. 240, that the organization and admission of states into the Union qualified the former federal jurisdiction over Indian country included therein, by withdrawing from the United States the control of offenses committed by white people. However, in Donnelly vs U.S., 228 U.S. 820, the United States Supreme Court held that the killing of an Indian by a person not of Indian blood, was cognizable in the Federal Courts under the Federal Statute which extended to Indian Country the so-called Major Crimes Act. We think the case here inovlved is definitely distinguished from the Donnelly case in three respects: First, the Federal Carnal Knowledge Act is not included in the so-called Ten Major Crimes Act, U.S. vs Jacobs, 113 F. Supp. 203, Williams vs U.S., 148 F. (2) 960, decided by this Court in 1945; Second, the Donnelly case refers strictly to Federal jurisdiction in Indian Country while the Court below in this case specifically placed the offense under the Federal Carnal Knowledge Act, which requires an offense to be committed within the special territorial limits of the United States in order to support federal jurisdiction; third, the Donnelly

case specifically considers the question whether the bed of the Klamath River was included within the Indian Reservation and further, considered the question of whether or not a certain placer mining claim was actually owned by the claimants or not. The Court in the Donnelly case definitely decided that the United States, as riparian owner, under the laws of the State of California, had title to the Klamath river bed and that the evidence in the record was too meager to determine whether valid rights had attached to the placer mining claim in favor of the claimants. We think, therefore, the plain inference of the Donnelly case is that if the title to the river bed, or the placer mining claim, belonged to someone other than the United States the Court would have held that the United States did not have jurisdiction. Here in this case, we must point out again that the appellant Guith had full title to the land on which the alleged offense was committed, and the United States had no jurisdiction. In the Donnelly case it should also be pointed out that there was no contention that the defendant was charged with a crime committe don land which he owned outright and subject to no reservation or jurisdiction by the United States.

In conclusion we assert that the federal court had no jurisdiction of this case and the judgment below should be reversed.

All of the argument set forth herein above is advanced by appellant in behalf of his specification of error number four, which involves the instruction of

the court below to the jury on the question of jurisdiction and which in totidem verbis was as follows: (TR. 188)

> "Within the territorial jurisdiction of the United States, and that requires some definition and that is found in Title 18, United States Codes Annotated, Section 7, Subdivision (3) which illustrates the meaning of that, what I have just read to you. Subdivision (3): "Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dock yard, or other needful building."
>
> You will note then that will be any lands reserved or acquired for use of the United States and under the exclusive or concurrent jurisdiction thereof, which fits this case precisely."

To this instruction the appellant duly excepted (Tr. 201) on the grounds that the Guith Ranch, where the alleged offense was allegedly committed, was not within the territorial jurisdiction of the United States, that the United States had reserved no right in said Guith Ranch, and that the evidence clearly showed that the said Guith Ranch was owned by the defendant by virtue of a tax deed granted by Glacier County, Montana.

Appellant's specification of error number two charges that the trial court erred in admitting appellee's Exhibit No. 1, which was an X-Ray showing a fully developed baby within the womb of the alleged victim, and also in denying appellant's objection to

all of the testimony of the witness, Doctor King, (Tr. 71). Appellant objected on the ground that there had been no connection made by this testimony and exhibit with the defendant below. This evidence was certainly highly prejudicial to the appellant and certainly served to inflame the jury against him. The court overruled the objection for the present. The witness then went on and testified and in that testimony (Tr. 72) actually gave evidence that he had no information relative to the paternity of the child. There was therefor no connection tying the evidence and the exhibit to the appellant. Wigmore, Underhill, Greenleaf, and Nichols all point out that it is elementary that before prejudicial evidence of the nature offered here can be admitted it must be connected with the defendant, and this certainly was not done here.

In behalf of his specification of error number three the appellant advances the argument that the court below erred in refusing appellant's proposed exhibit number four (Tr. 149, 150). This was a letter from a firm of attorneys which asked the appellant to come to their office and discuss this case with them. It was offered for the purpose of impeaching the testimony of Edward Gobert, No. 2 (Tr. 83, 84) in which Gobert had denied that there was any discussion of getting money from the appellant, and hiring an attorney for that purpose. We think the exhibit was clearly admissible for that purpose. McKelvey on Evidence, Sec. 207, P. 388.

Arguing appellant's specification of error number

five, we contend that the court below erred in admitting the testimony of the witness Fopp (Tr. 165) wherein said witness testified that the appellant had admitted having intercourse with the prosecutrix. This we contend was not an admission but a confession, if true, and was subject to the strict rules of foundation for admission of a confession. There was no foundation laid as to the voluntary character of the confession and certainly no foundation as to whether or not any threat or inducement was made to the appellant to procure said confession. We do not want to belabor the court with what has been said on the matter of the admissibility of confessions without proper foundations in hundreds of cases decided by this court. McKelvey on Evidence, Sec. 110, P. 224, Wilson vs U.S., 162 U.S. 613, Greenletf, Evidence, Sec. 214, Note 2.

CONCLUSION

We think the errors of the Court below as set forth hereinabove are prejudicial and reversible, and we believe that this court can only come to the conclusion that the judgment of conviction below should be reversed.

Respectfully Submitted,

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JERRY J. O'CONNELL,
Attorney for Appellant.